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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/820,498

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Samuel D. Davis

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7407

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03/23/2006

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EXAMINER

GELIN, JEAN ALLAND

ART UNIT

PAPER NUMBER

2617

DATE MAILED: 03/23/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/820,498

Applicant(s)

DAVIS ET AL.

Examiner

Jean A. Gelin

Art Unit

2688

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 07 April 2004.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-46 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-36 is/are allowed.
- 6) ☒ Claim(s) 37 and 41-46 is/are rejected.
- 7) ☒ Claim(s) 38-40 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 6/14/04.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

**DETAILED ACTION**

***Claim Rejections - 35 USC § 112***

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claim 1 recites the limitation "the central data acquisition system" in line 5.

There is insufficient antecedent basis for this limitation in the claim.

Regarding claims 1-46, the phrase "capable of" renders the claim indefinite because it is unclear whether the limitation(s) following the phrase are part of the claimed invention. See MPEP § 2173.05(d).

It has been held that the recitation that an element is "capable of" performing a function is not a positive limitation but only requires the ability to so perform. It does not constitute a limitation in any patentable sense. In re, Hutchison, 69 USPQ 138.

Regarding to claim 45, the phrase "communicating a remote data collection device" is not clear. Appropriate correction is required.

***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

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4. Claims 37\*\* are rejected under 35 U.S.C. 102(b) as being anticipated by McGarry et al. (US 6,038,491).

Regarding claims 37 and 44, McGarry teaches a remote telemetry device (22) comprising: a transceiver that receives a second identification code (col. 6, lines 16-31); the second identification code being capable of being changed to a new second identification code (col. 11, line 6 to col. 12, line 54); and a processing device coupled to the transceiver, the processing device being capable of detecting the new second identification code, wherein said transceiver transmits the new second identification code via a cellular network (col. 11, line 16 to col. 12, line 54).

Regarding claims 41 and 45, McGarry teaches a connecting terminal that is coupled to the processing device and a remote data collection device, the connecting terminal being capable of facilitating communication between the remote data collection device and the remote telemetry device (col. 9, lines 8-34).

Regarding claim 42, McGarry teaches the connecting terminal is one of an Ethernet, serial, and modem connection (col. 9, lines 8-54).

Regarding claims 43 and 46, McGarry teaches wherein the processing device is capable of receiving data from the remote data collection device and instructing the transceiver to send the data to a central data acquisition system (col. 5, lines 17-33, col. 9, lines 8-54).

***Allowable Subject Matter***

5. Claims 1-36 are allowed.

6. Claims 38-40 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Conclusion***

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Bell	US 5,852,409	12/22/1998
Sandars	US 4,856,047	08/08/1989
Astrom et al.	US 6,134,441	10/17/2000
Partyka	US 6,466,138	10/15/2002
Vassilovski et al.	US 2002/0105939	08/08/2002
Stucky et al.	US 2002/0155832	10/24/2002
Addy et al.	US 6,445,291	09/03/2002
Sandelman et al.	US 2002/0097150	07/25/2002

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jean A. Gelin whose telephone number is (571) 272-7842. The examiner can normally be reached on 9:30 AM to 7:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Banks-Harold Marsha can be reached on (571) 272-7905. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

JGelin  
March 10, 2006

**JEAN GELIN**  
**PRIMARY EXAMINER**

*Jean Allard Gelin*